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6

7 **THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF NEVADA**

9 RUBY PIPELINE, L.L.C., a Delaware limited
liability company,

CASE NO.: 3:10-cv-00332-RCJ-WGC

10 Plaintiff,

11 vs.

**ORDER GRANTING PLAINTIFF RUBY
PIPELINE, L.L.C.'S MOTION FOR
SUMMARY JUDGMENT AND
AWARDING JUST COMPENSATION**

12 0.768 ACRES OF REAL PROPERTY IN
ELKO COUNTY, NEVADA; THE ESTATE
13 OF VELDA HANVILLE; ELKO COUNTY,
NEVADA; 0.498 ACRES OF REAL
14 PROPERTY IN HUMBOLDT COUNTY,
NEVADA; RICHARD C. HARRIS, an
15 individual; JANE M. HARRIS, an individual;
2.673 ACRES OF REAL PROPERTY IN
16 HUMBOLDT COUNTY, NEVADA; 0.335
ACRES OF REAL PROPERTY IN
17 HUMBOLDT COUNTY, NEVADA; JDK
1991 TRUST; JAMES EDWARD
18 BATEMAN AS CO-TRUSTEE OF THE
JDK 1991 TRUST; CHERYL J. BATEMAN,
19 AS CO-TRUSTEE OF THE JDK 1991
TRUST; INTERMOUNTAIN FEDERAL
20 LAND BANK ASSOCIATION FLCA;
FRANK TSCHANNEL, an individual; 0.743
21 ACRES OF REAL PROPERTY IN
HUMBOLDT COUNTY, NEVADA;
22 BENJAMIN INAY SOLOMON, TRUSTEE
UNDER THAT CERTAIN UNRECORDED
23 SELF TRUSTEED TRUST; CONCEPTION
PENA SOLOMON TRUSTEE UNDER
24 THAT CERTAIN UNRECORDED SELF
TRUSTEED TRUST; and ALL UNKNOWN
25 OWNERS OF OR INTEREST HOLDERS
IN THE ABOVE DESCRIBED TRACTS,

26 Defendants.
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1 THIS MATTER came before the Court on Plaintiff Ruby Pipeline, L.L.C.'s Motion for
2 Summary Judgment and for an Order Awarding Just Compensation [Doc 98]. Ruby Pipeline,
3 L.L.C. ("Ruby") sought summary judgment on its condemnation claim against the Estate of
4 Velda Hanville (the "Estate"), 0.768 Acres of Real Property in Elko County, and all unknown
5 owners or interest holders in the subject property, with respect to a 50-foot wide permanent
6 easement across the Hanville property in order to operate and maintain a natural gas pipeline.
7 Ruby also requested that the Court award the Estate \$5,000.00 as just compensation for the
8 easement. The hearing on this matter was held on April 13, 2015. Appearing on behalf of
9 Ruby was J. Robert Smith with the law firm of Holland & Hart, LLP and Laurence Garrett with
10 Ruby. The Estate has never appeared in this matter, and no one appeared on its behalf or on
11 behalf of any interested person at the hearing. The Court having considered the Motion [Doc.
12 98], Reply [Doc. 100], Declarations and Exhibits in support thereof, and having heard the
13 argument of counsel for Ruby, grants Ruby's Motion for Summary Judgment and awards just
14 compensation in the amount of \$5,000.00.
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17 I. FINDINGS

18 1. On April 5, 2010, Ruby was issued a Certificate of Public Convenience and
19 Necessity (Certificate) by the Federal Energy Regulatory Commission ("FERC") to construct
20 and operate a natural gas pipeline and related facilities in Wyoming, Utah, Nevada, and Oregon
21 (the "Project."). [See Doc. 98-1 (131 FERC P 61007 (F.E.R.C.), 2010 WL 1286021)].
22

23 2. The Certificate issued to Ruby required that "the authorized facility locations
24 shall be as shown in the [Environmental Impact Statement], as supplemented by filed alignment
25 sheets." [See Doc. 98-1 (131 FERC P 61007, 61037, 2010 WL 1286021,*30)]. The Certificate
26 further directed that "Ruby's exercise of eminent domain authority granted under Section 7(h)
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1 of the Natural Gas Act in any condemnation proceedings related to this order must be
2 consistent with these authorized facilities and locations.” *Id.*

3 3. Other than the defendants in this case, Ruby successfully negotiated with all of
4 the Nevada landowners whose property the FERC approved right-of-way crossed. Because
5 Ruby was unable to reach an agreement with the above-captioned defendants for the purchase
6 of certain easements on their properties, Ruby filed this action seeking to acquire the property
7 rights by eminent domain.
8

9 4. After this lawsuit was filed, and except for the Estate, Ruby was able to
10 negotiate agreements with each of the Defendants, who were later dismissed from this action.
11

12 5. The property owned by the Estate, and that is the subject of this action, is
13 unimproved land located in a remote area of Elko County, Nevada, APN 010-16E-067, and
14 legally described as follows:

15 Northwest Quarter of the Southwest Quarter of the Northwest Quarter of
16 Section 19, Township 41 North, Range 67 East of the Mount Diablo
Meridian, Elko County Nevada.

17 (the “Hanville Property”). The Hanville Property is located on the final route for the Project
18 and is, therefore, necessary for the Project.
19

20 6. Ruby seeks a 50-foot permanent and perpetual easement and right-of-way across
21 the Hanville Property for the purposes, presently and at any such time in the future as Ruby
22 may elect, of constructing, maintaining, operating, renewing, repairing, relocating, removing
23 and/or replacing the pipeline in a manner consistent with Ruby’s Certificate and the regulations
24 of FERC, for the transportation of natural gas, and all appliances, appurtenances, fixtures,
25 equipment, and facilities whether above or below ground, deemed by Ruby to be necessary or
26 desirable in connection with the pipeline.
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1 7. The 50-foot pipeline easement at issue crosses a portion of the Hanville
2 Property, and is legally described as follows:

3 A 50.00 foot easement for pipeline purposes across a portion of the
4 Northwest Quarter of the Southwest Quarter of the Northwest Quarter of
5 Section 19, Township 41 North, Range 67 East of the Mount Diablo
6 Meridian, Elko County Nevada. Said easement being 25.00 feet on each side
7 of the following described centerline:

8 Commencing from the Northeast Corner of the Northwest Quarter of said
9 Section 19, thence South 00 degrees 03 minutes 17 seconds West, along the
10 East line of the Northwest Quarter of said Section 19, a distance of 1710.15
11 feet: thence South 81 degrees 47 minutes 14 seconds West, a distance of
12 2010.11 feet to the East line of the Northwest Quarter of the Southwest
13 Quarter of the Northwest Quarter of said Section 19 and the Point of
14 Beginning; thence continuing South 81 degrees 47 minutes 14 seconds West,
15 a distance of 669.46 feet to the West line of the Northwest Quarter of the
16 Southwest Quarter of the Northwest Quarter of said Section 19 and the Point
17 of Terminus, at which point the Northwest Corner of the Northwest Quarter
18 of said Section 19, bears North 00 degrees 26 minutes 45 seconds West, a
19 distance of 1971.01 feet.

20 Extending or shortening the side lines to close upon the East and West lines
21 of the Northwest Quarter of the Southwest Quarter of the Northwest Quarter
22 of said Section 19. Containing 33,472.78 Square Feet or 0.768 Acres more
23 or less.

24 (Hereinafter the "Easement").

25 8. With respect to the Hanville Property, Ruby's negotiators determined that Ray
26 and Velda Hanville were the listed owners of the Property, but that Ray Hanville died in the
27 1980's and Velda Hanville died in 1997 in Santa Clara County, California. Subsequent inquiries
28 in those county records and adjacent counties yielded no additional information about the
administration of Ms. Hanville's estate. Ruby's investigation further indicated that Ms. Julie
Rosenthal may be an heir of the Hanville Estate. Ruby sent Ms. Rosenthal a letter on March 6,
2009, informing her of the Project and that construction activities would likely be crossing the
Hanville Property. Ruby's negotiators also spoke with Ms. Rosenthal via telephone on several
occasions subsequent to the March 6, 2009 letter regarding the Project.

1 9. On March 22, 2010, Ruby extended a formal offer to Ms. Rosenthal to purchase
2 the Easement from the Hanville Estate in the amount of \$1,892.93. Ms. Rosenthal did not
3 respond to the March 22, 2010 offer. On May 5, 2010, Ruby sent a second letter to Ms.
4 Rosenthal, increasing the offer to purchase the Easement from \$1,892.93 to \$5,000.00. Ms.
5 Rosenthal did not respond to the May 5, 2010 offer letter. Ruby's efforts to locate relatives of
6 the deceased landowners and negotiate with them was made in good faith.
7

8 10. After filing the Complaint in this case, Ruby requested the Court's permission to
9 serve the Notice required by Federal Rule of Civil Procedure 71.1(d)(2) upon the Estate via
10 publication. [Doc. 15, 16]. Service by publication was completed on July 9, 2010, as evidenced
11 by Proof of Publication filed by Ruby on August 26, 2010. [Doc. 45]. Despite this Notice, no
12 Answer was filed and no persons have come forward to appear on behalf of, or claim an
13 interest in, the Hanville Property.
14

15 11. In June 2010, and in connection with determining the value of the Easement
16 across the Hanville Property, Ruby retained an Accredited Rural Appraiser (ARA) and a
17 Certified General Appraiser familiar with ranch land in Northern Nevada to appraise the
18 Hanville Property. [See Doc. 98-3]. Ruby's land appraiser valued the entire 9.75 acres
19 comprising the Hanville Property at \$5,645.00, and opined that the just compensation for the
20 50-foot Easement was \$445.00. The appraiser's value for the Easement has not changed since
21 his original appraisal in June 2010. Although the appraised value of the Easement interests is
22 relatively low, Ruby stands by its prior \$5,000.00 offer and maintains such amount is just
23 compensation for the Easement interests. The Court, therefore, finds that \$5,000.00 constitutes
24 just compensation for the Easement interests across the Hanville Property.
25

26 12. On September 3, 2010, Ruby brought a motion for: (1) partial summary
27 judgment seeking confirmation of its condemnation authority regarding the Easement across
28

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1 the Hanville Property [Doc. 66]; and (2) a preliminary injunction seeking immediate possession
2 of the land comprising the Easement. [Doc. 66]. This Court granted Ruby's motions. [See
3 Doc's. 81 and 82]. Armed with the Court's order granting Ruby the right to immediately
4 occupy the Hanville property and construct the pipeline, Ruby was ultimately able to complete
5 construction of the pipeline.
6

7 13. On February 17, 2015, Ruby brought a Motion for Summary Judgment on its
8 claim against the Estate. [Doc. 98]. In its Motion, Ruby requested: (1) an order of
9 condemnation be entered condemning the property interests – the Easement – sought in this
10 action; and (2) an order awarding just compensation in the amount of \$5,000.00 for the
11 Easement.
12

13 14. After filing its Motion for Summary Judgment, Ruby had Ms. Rosenthal
14 personally served with a copy of: (1) Notice of Motion for Summary Judgment; (2) Motion for
15 Summary Judgment; and (3) a cover letter enclosing the Motion. [See Docs. 100 and 101]. Ms.
16 Rosenthal was personally served with these documents on February 20, 2015. [Doc. 100-3]. In
17 addition, Ruby had the Notice of Motion for Summary Judgment published in the Elko Daily
18 Free Press on March 5, March 7, March 10, and March 12, 2015. [Doc. 100-4].
19

20 15. Despite personal service on Ms. Rosenthal and publication of the Notice in the
21 Elko Daily Free Press, no opposition to the Motion for Summary Judgment was filed by
22 anyone, and no one appeared to oppose the Motion.
23

24 **II. CONCLUSIONS OF LAW**

25 **A. Ruby is Entitled to an Order of Condemnation.**

26 Pursuant to the Natural Gas Act, the FERC Certificate issued to Ruby authorizes it to
27 exercise the power of eminent domain to acquire property necessary to the Project when it is
28 unable, despite its good faith efforts, to reach an agreement with the landowner as to the

1 compensation to be paid. *See* 15 U.S.C. § 717f(h). In order to obtain an order of condemnation
2 by the District Court, Ruby must show: “(1) that it holds a FERC certificate authorizing the
3 relevant project; (2) that the land to be taken is necessary to the project; and (3) that the
4 company and the landowners have failed to agree on a price for the taking” *Transwestern*
5 *Pipeline Co., LLC v. 17.19 Acres*, 550 F.3d 770, 776 (9th Cir. 2008).
6

7 Ruby meets the criteria for an order of condemnation set forth in Section 717f(h) of the
8 Natural Gas Act, and is therefore entitled to summary judgment on its condemnation claim.

9 ***1. Ruby Holds a FERC Certificate for the Project.***

10 It is undisputed that Ruby holds a FERC Certificate authorizing the construction,
11 operation, and maintenance of the Project. [See Doc. 98-1 (131 FERC P 61007 (F.E.R.C.),
12 2010 WL 1286021)]. Moreover, this Court has already found that “Ruby Pipeline holds a
13 certificate of public convenience and necessity issued by the Federal Energy Regulatory
14 Commission authorizing the construction, operation and maintenance of the Ruby Pipeline
15 Project.” [See Doc. 81, at 2:14-16]. Therefore, the first requirement for issuing an order of
16 condemnation has been established.
17

18 ***2. The Property Sought to be Condemned is Necessary to the Project.***

19 As explained above, the Pipeline crosses a segment of the Hanville Property. That
20 Property was necessary to the Ruby Project. Specifically, the Certificate issued to Ruby fixed
21 the Final Route for the Project. Ruby was required to locate the Project as shown in the
22 Environmental Impact Statement Prepared for the Project; the route that FERC has concluded
23 is “an environmentally acceptable action.” [See Doc. 98-1 (131 FERC P 61007, 61036, 2010
24 WL 1286021, *27)]. That conclusion makes the condemnation sought here necessary within
25 the meaning of Section 717f(h). *See Williams v. Transcontinental Gas Pipe Line, Corp.*, 89 F.
26 Supp. 485, 488 (W.D.S.C. 1950) (rejecting landowner’s contention that property was not
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28

1 necessary to a pipeline project because alternate routes existed, “the determination of what
2 property is needed to accomplish the public purpose for which the right of eminent domain is
3 given must of necessity rest with the agency charged with carrying out the public work”); *see*
4 *also California Gas Producers Association v. Federal Power Commission*, 383 F.2d 645, 648
5 (9th Cir. 1967) (“...the granting or denial of a certificate of public convenience and necessity is
6 a matter peculiarly within the discretion of the Commission.”). Moreover, the Court has
7 previously concluded “that the land to be taken is necessary to the Ruby Pipeline Project.”
8 [Doc. 81, at 2:16]. Accordingly, the second requirement for issuing an order of condemnation
9 has been established.
10

11 **3. *Ruby Pipeline has Been Unable to Reach Agreement with the Hanville***
12 ***Estate to Acquire the Necessary Easements.***

13 Finally, Ruby has been unable to reach an agreement with the landowner. As explained
14 above, the owners Ray and Velda Hanville died many years ago. Despite Ruby’s efforts to
15 negotiate with a relative of Velda Hanville, such negotiations have been unsuccessful.
16 Consequently, Ruby has been unable to acquire by contract, or has otherwise been unable to
17 agree with the landowners on a price for the taking. In addition, Ruby has established to the
18 satisfaction of the Court that it engaged in good faith efforts to locate relatives of the deceased
19 landowners and negotiate with them. Therefore, Ruby has established the third and final
20 requirement for this Court to issue an order of condemnation.
21

22 **B. The Just Compensation for the Easement is \$5,000.00.**

23 Given that Ruby has established the necessary requirements for the Court to issue an
24 order of condemnation of the Easement across the Hanville Property, the only issue left for the
25 Court to determine is the just compensation to be paid by Ruby for the property interest
26 condemned. As the First Circuit has recognized,
27
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1 Once a [certificate] is issued by the FERC, and the gas company is unable
2 to acquire the needed land by contract or agreement with the owner, the
3 only issue before the district court in the ensuing eminent domain
4 proceeding is the amount to be paid to the property owner as just
5 compensation for the taking.

6 *Maritimes & Northeast Pipeline, L.L.C. v. Decoulos*, 146 Fed.Appx. 495, 498 (1st Cir. 2005).

7 Ruby's land appraisal expert valued the entire 9.75 acres comprising the Hanville
8 Property at \$5,645.00, and opined that the just compensation for the 50-foot Easement was
9 \$445.00. Nevertheless, Ruby previously offered the last known relatives of Mrs. Hanville
10 \$5,000.00 for the Easement interests, which Ruby continues to maintain is just compensation.
11 Accordingly, the Court concludes that \$5,000.00 constitutes just compensation for the
12 Easement interests across the Hanville Property.

13 In addition, because no identified heirs of Ms. Hanville or representatives of her Estate
14 have entered an appearance, and the Property appears to have been abandoned, Ruby requested
15 that it be permitted to pay the compensation into the registry of the Court and held by the Court
16 for a reasonable period of time in the event an heir comes forward. If no heir comes forward,
17 the money should escheat to the State of Nevada. The Court agrees with this procedure.

18 **NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED**
19 that:

- 20 1. Ruby Pipeline, L.L.C.'s Motion for Summary Judgment is **GRANTED**.
- 21 2. Ruby Pipeline, L.L.C. is granted a 50-foot permanent and perpetual easement
22 and right-of-way for the purposes, presently and at any such time in the future as Ruby
23 Pipeline, L.L.C. may elect, of constructing, maintaining, operating, renewing, repairing,
24 relocating, removing and/or replacing the pipeline in a manner consistent with Ruby Pipeline,
25 L.L.C.'s Federal Certificate of Public Convenience and Necessity, issued on April 5, 2010, and
26 the regulations of the Federal Energy Regulatory Commission, for the transportation of natural
27 gas.
- 28

1 gas, and all appliances, appurtenances, fixtures, equipment, and facilities whether above or
 2 below ground, deemed by Ruby Pipeline, L.L.C. to be necessary or desirable in connection
 3 with the pipeline, across the following described real property in Elko County, Nevada, APN
 4 010-16E-067:

5 Northwest Quarter of the Southwest Quarter of the Northwest Quarter of
 6 Section 19, Township 41 North, Range 67 East of the Mount Diablo
 7 Meridian, Elko County Nevada.

8 3. The Easement that Ruby Pipeline, L.L.C. is granted is legally described as
 9 follows:

10 A 50.00 foot easement for pipeline purposes across a portion of the
 11 Northwest Quarter of the Southwest Quarter of the Northwest Quarter of
 12 Section 19, Township 41 North, Range 67 East of the Mount Diablo
 13 Meridian, Elko County Nevada. Said easement being 25.00 feet on each side
 14 of the following described centerline:

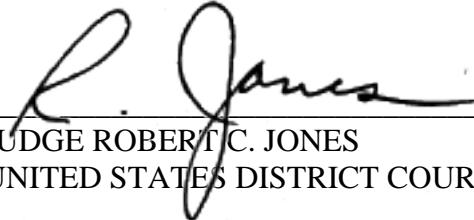
15 Commencing from the Northeast Corner of the Northwest Quarter of said
 16 Section 19, thence South 00 degrees 03 minutes 17 seconds West, along the
 17 East line of the Northwest Quarter of said Section 19, a distance of 1710.15
 18 feet: thence South 81 degrees 47 minutes 14 seconds West, a distance of
 19 2010.11 feet to the East line of the Northwest Quarter of the Southwest
 20 Quarter of the Northwest Quarter of said Section 19 and the Point of
 21 Beginning; thence continuing South 81 degrees 47 minutes 14 seconds West,
 22 a distance of 669.46 feet to the West line of the Northwest Quarter of the
 23 Southwest Quarter of the Northwest Quarter of said Section 19 and the Point
 24 of Terminus, at which point the Northwest Corner of the Northwest Quarter
 25 of said Section 19, bears North 00 degrees 26 minutes 45 seconds West, a
 26 distance of 1971.01 feet.

27 Extending or shortening the side lines to close upon the East and West lines
 28 of the Northwest Quarter of the Southwest Quarter of the Northwest Quarter
 of said Section 19. Containing 33,472.78 Square Feet or 0.768 Acres more
 or less.

4. Ruby shall pay \$5,000.00 as just compensation for the Easement. Because there
 has been no appearance on behalf of the Estate or by any interested person, such compensation
 shall be paid to the Court Clerk and held in the registry of the Court for a reasonable period of
 time in the event someone subsequently claims an interest in the Property. In the event no one

1 claims an interest in the Property during a reasonable period time as determined by the Court,
2 the compensation shall escheat to the State of Nevada. To the extent Ruby has already paid
3 money into the registry of the Court in excess of the \$5,000.00, Ruby is entitled to a return of
4 the balance in excess of the \$5,000.00.
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6 Dated this 11th day of May, 2015.

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9 JUDGE ROBERT C. JONES
10 UNITED STATES DISTRICT COURT JUDGE
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